

REMARKS upon Sir *Alexander Cuming's* CASE.

THE Respondent, according to his former Practice, during the Dependence of this Suit, before the Lords of Session, has in his printed Case, stuff'd the same with laying a great many pretended Misdemeanors to the Appellant's Charge, but all these being supported by no legal Proof (except the Respondent would have his own bold Assertions to be taken as such) and being sufficiently disproved by the Appellant's Counter-Evidence, nothing was found at the Bottom but Calumny and Misrepresentation, invented to support the Respondent's illegal Grant, and to none of which the Appellant did ever plead the Indemnity (as is most untruly suggested in the Respondent's Case) but by undisputed Evidence disproved every thing laid to his Charge the Judges (who are obliged to observe what Crimes are pardon'd by the Indemnity) being of Opinion all Misdemeanors Prior to it were pardon'd did of themselves, without any Application, by the Appellant ordain both Parties in their Presence to debate the Extent of the Indemnity and by a Subsequent Sentence they gave it as their Opinion that supposing any Misdemeanors had been proved against the Appellant that the Indemnity pardon'd them, and this occasioned the Lords not giving any Sentence either upon the Proof of these Misdemeanors, brought by the Respondent, or of the Counter-Evidence adduced by the Appellant to disprove the same, but the Indemnity was not pleaded upon by the Appellant but only in Obedience to the said Lord's Order; for he was very desirous the several Misdemeanors, with the respective Proofs of both Parties might have been examin'd by which Means the Calumny of these groundless Misdemeanors would have been easily disclosed.

But that these pretended Misdemeanors are all of a Piece with the Respondent's other Assertions, mere Misrepresentation is evident from,

That the Appellant was so far from being the Occasion of exasperating the Magistrates of *Campvere*, as obliged them to lay an Arrest on all *Scotch* Effects in 1691, that he was the only Person that procured the Arrest to be taken off and had the Thanks and a Reward from the Royal Burroughs for so doing, which had he occasion'd they never would have done.

That the Appellant was so far from doing any thing to the Prejudice of the Royal Burroughs by concluding the Staple Contract in 1697, that they gave him a Reward of 250*l.* sterling for his Pains in that Affair which was concluded to his late Majesty and the Royal Burrough's entire Satisfaction and the 2000 Ducatdouns was the ordinary Gratification given by the Town *Campvere* to the Appellant's Predecessors for their concluding a staple Contract and wherewith the Royal Burroughs were fully acquainted.

The Imposition upon Corns was done in 1692, by the Authority of the Royal Burroughs.

That the Appellant was so far from Renouncing his Jurisdiction that he relieved the *Scotch* Factor from the *Dutch* Jurisdiction and saved him from the violent Prosecution of *Dunheldt*, who had debauch'd his Wife.

The Appellant's disposing with Breaches of the Staple, and taking the Money on that Account, was never so much as charg'd upon the Appellant.

The Arrest laid upon *Reyx's* Effects in 1697, was in pursuit of an Action formerly Commenced against him at the *Hague*, by the Agent of the Royal Burroughs, for the said *Reyx's* imbazling 800*l.* *Fleemish* of the *Prin's* Money which the Appellant had the Royal Burrough's Authority.

The Appellant never had any Controversy with the States, nor did the Appellant ever imprison any of the Queen's Subjects but upon very just Grounds; and whatever partial Report the Commissioners of the Royal Burroughs made thereof, yet the same was never approved of by them.

That the Appellant can never be blam'd for appointing his own Secretary his Deputy, who was very well qualified for that Office, as was also the other Gentleman complain'd of, and both zealous for the Privilege of the Nation.

That by the third and thirteenth Articles of the Staple Contract, only Burghers of *Campvere* are precluded from Trading in Staple Goods, and it was never so much as pretended they did. And tho' all these pretended Misdemeanors were fully argued before the Lords, yet they found only one proved, *viz.* The Communicating the *Scotch* Privileges to Foreigners: Upon this the Decree appealed against is only founded; so that all these calumnious Representations are entirely out of the Case.

But the Respondent, the better to colour the Injustice of his Cause, brings Her sacred Majesty as a joint Respondent, tho' the Appeal is not brought, against Her Majesty for the Respondent's Interest, was the only thing considered in this Decree, the Lords having declared his Right to the Office, by Vertue of his Commission, and the Concurrence of Her Majesty in the Respondent's Action, was no more than what the Law of *Scotland* allows to every Subject in Suits of this Nature, and which the Appellant likewise had in his Action for reducing the Respondent's Commission.

Nor can the Opinion of Lawyers be of any moment, since they must return Answers as Queries are made to them, and how fairly the Respondent would do that, is easy to imagine; nor are the Respondents ten Witnesses of any more force, since but two of them prove any thing relating to the Point mentioned in the Decree.

Therefore the Appellant humbly hopes their Lordships will have no Regard to the Respondent's Out-of-the-way Calumnious Misrepresentations, and consider only the Decree appealed against.